

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

AMELIA SAPPHIRE, individually and as  
class representative,

Plaintiff,

v.

FRED MEYER STORES, INC.,

Defendant.

Case No. 2:22-cv-01795-JCC

**DEFENDANT’S ANSWER TO  
PLAINTIFF’S COMPLAINT AND  
AFFIRMATIVE DEFENSES**

For its answer to Plaintiff’s Complaint for Damages (“Complaint”),  
Defendant Fred Meyer Stores, Inc. (“Fred Meyer” or “Defendant”) responds as follows:

**I. SUMMARY STATEMENT**

1.

In response to Paragraph 1 of the Complaint, Defendant admits that this  
paragraph fairly summarizes Plaintiff’s allegations and claims in the Complaint. To the  
extent that Paragraph 1 contains any factual allegations, Defendant denies those  
allegations.

**II. JURISDICTION AND VENUE**

2.

In response to Paragraph 2 of the Complaint, Defendant admits that it  
does business in the State of Washington, including King County and that it is a foreign  
profit corporation registered to do business in Washington. Defendant denies all  
remaining allegations in this paragraph.

1 3.

2 Paragraph 3 of the Complaint contains legal conclusions to which no  
3 response is required. To the extent that a response is required, Defendant admits that it  
4 operates and conducts business in King County. Defendant denies all remaining  
5 allegations in this paragraph.

6 4.

7 Paragraph 4 of the Complaint contains legal conclusions to which no  
8 response is required. To the extent that a response is required, Defendant admits that  
9 Plaintiff's claims are brought under Washington state law. Defendant denies all  
10 remaining allegations in this paragraph.

11 5.

12 Denied.

13 **III. PARTIES**

14 6.

15 In response to Paragraph 6 of the Complaint, Defendant admits that  
16 Plaintiff was employed by Fred Meyer beginning on or around August 15, 2022 and that  
17 she has represented that she is a resident of Clark County in the State of Washington,  
18 which Defendant has no reason to dispute. Defendant also admits that Plaintiff  
19 currently works for Fred Meyer in the bakery department at its store in Hazel Dell at  
20 7700 NE Highway, Vancouver, WA 98665. Defendant denies all remaining allegations  
21 in this paragraph.

22 7.

23 In response to Paragraph 7 of the Complaint, Defendant admits that it  
24 operates a chain of retail grocery stores and is incorporated in the State of Ohio with its  
25 principal place of business at 1014 Vine Street, Cincinnati, Ohio 45202. Defendant  
26 denies all remaining allegations in this paragraph.

**IV. CLASS ACTION ALLEGATIONS**

8.

In response to Paragraph 8 of the Complaint, Defendant admits that Plaintiff seeks to bring a putative class action on behalf of a class defined in the Complaint as: “All individuals who are or have been employed by Fred Meyer in the State of Washington at any time since the activation of the new payroll system, which is believed to have occurred in September 2022, through the date of final disposition of this action” (the “Proposed Class”). Defendant denies all remaining allegations in this paragraph.

9.

In response to Paragraph 9 of the Complaint, Defendant admits that Plaintiff seeks to certify a Proposed Class consisting of more than 10,000 individuals. Defendant denies all remaining allegations in this paragraph.

10.

The allegations in this paragraph contain legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in this paragraph.

11.

The allegations in this paragraph contain legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in this paragraph.

12.

The allegations in this paragraph contain legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in this paragraph.

13.

1 The allegations in this paragraph contain legal conclusions to which no  
2 response is required. To the extent a response is required, Defendant denies the  
3 allegations in this paragraph.

4 14.

5 The allegations in this paragraph contain legal conclusions to which no  
6 response is required. To the extent a response is required, Defendant denies the  
7 allegations in this paragraph.

8 **V. FACTS COMMON TO ALL CLAIMS**

9 15.

10 In response to Paragraph 15 of the Complaint, Defendant admits that it  
11 implemented a new payroll system for its hourly paid, non-exempt employees in  
12 Washington in or around September 2022. Defendant denies all remaining allegations  
13 in this paragraph.

14 16.

15 In response to Paragraph 16 of the Complaint, Defendant admits the  
16 existence of certain temporary payroll discrepancies resulting from the new payroll  
17 system, which Defendant promptly corrected and continues to correct as it becomes  
18 aware of or identifies them. Defendant denies all remaining allegations in this  
19 paragraph.

20 17.

21 Denied.

22 18.

23 In response to Paragraph 18 of the Complaint, Defendant admits the  
24 existence of certain temporary payroll discrepancies resulting from the new payroll  
25 system, which Defendant promptly corrected and continues to correct as it becomes  
26 aware of or identifies them. Defendant denies all remaining allegations in this

1 paragraph.

2 19.

3 In response to Paragraph 19 of the Complaint, Defendant admits that it is  
4 making efforts to identify and correct payroll discrepancies to remedy the discrepancies.  
5 Defendant denies all remaining allegations in this paragraph.

6 **VI. FIRST CLAIM FOR RELIEF**

7 **(Violation of RCW 49.46.090 – Payment of Wages Less than Entitled)**

8 20.

9 Defendant incorporates by reference its responses to the preceding  
10 paragraphs as if fully stated herein.

11 21.

12 The allegations in this paragraph contain legal conclusions to which no  
13 response is required. To the extent a response is required, Defendant responds that the  
14 provisions of RCW 49.46.090 speak for themselves. Defendant denies all remaining  
15 allegations in this paragraph.

16 22.

17 The allegations in this paragraph contain legal conclusions to which no  
18 response is required. To the extent a response is required, Defendant denies the  
19 allegations in this paragraph.

20 **VII. SECOND CLAIM FOR RELIEF**

21 **(Violation of RCW 49.46.130 – Failure to Pay Overtime Wages)**

22 23.

23 Defendant incorporates by reference its responses to the preceding  
24 paragraphs as if fully stated herein.

25 24.

26 The allegations in this paragraph contain legal conclusions to which no

1 response is required. To the extent a response is required, Defendant responds that the  
2 provisions of RCW 49.46.130 speak for themselves. Defendant denies all remaining  
3 allegations in this paragraph.

4 25.

5 The allegations in this paragraph contain legal conclusions to which no  
6 response is required. To the extent a response is required, Defendant denies the  
7 allegations in this paragraph.

8 **VIII. THIRD CLAIM FOR RELIEF**

9 **(Violation of RCW 49.52.060 and WAC 296-126-028 – Unlawful Deductions**  
10 **or Rebates)**

11 26.

12 Defendant incorporates by reference its responses to the preceding  
13 paragraphs as if fully stated herein.

14 27.

15 The allegations in this paragraph contain legal conclusions to which no  
16 response is required. To the extent a response is required, Defendant responds that the  
17 provisions of RCW 49.52.060 and WAC 296-126-028 speak for themselves. Defendant  
18 denies all remaining allegations in this paragraph.

19 28.

20 The allegations in this paragraph contain legal conclusions to which no  
21 response is required. To the extent a response is required, Defendant responds that the  
22 provisions of WAC 296-126-028(5), RCW 49.52.060, and WAC 296-128-010(9) speak  
23 for themselves. Defendant denies all remaining allegations in this paragraph.

24 29.

25 The allegations in this paragraph contain legal conclusions to which no  
26 response is required. To the extent a response is required, Defendant denies the

1 allegations in this paragraph.

2 30.

3 The allegations in this paragraph contain legal conclusions to which no  
4 response is required. To the extent a response is required, Defendant denies the  
5 allegations in this paragraph.

6 **IX. FOURTH CLAIM FOR RELIEF**

7 **(RCW 49.52.050 – Willful Refusal to Pay Wages)**

8 31.

9 Defendant incorporates by reference its responses to the preceding  
10 paragraphs as if fully stated herein.

11 32.

12 The allegations in this paragraph contain legal conclusions to which no  
13 response is required. To the extent a response is required, Defendant responds that the  
14 provisions of RCW 49.52.070 speak for themselves. Defendant denies all remaining  
15 allegations in this paragraph.

16 33.

17 The allegations in this paragraph contain legal conclusions to which no  
18 response is required. To the extent a response is required, Defendant responds that the  
19 provisions of RCW 49.52.070 speak for themselves. Defendant denies all remaining  
20 allegations in this paragraph.

21 34.

22 The allegations in this paragraph contain legal conclusions to which no  
23 response is required. To the extent a response is required, Defendant denies the  
24 allegations in this paragraph.

25 35.

26 The allegations in this paragraph contain legal conclusions to which no

1 response is required. To the extent a response is required, Defendant denies the  
2 allegations in this paragraph.

3 36.

4 The allegations in this paragraph contain legal conclusions to which no  
5 response is required. To the extent a response is required, Defendant denies the  
6 allegations in this paragraph.

7 37.

8 Except as expressly admitted above, Defendant denies each and every  
9 allegation in the Complaint, including the Prayer for Relief.

10 **AFFIRMATIVE DEFENSES**

11 Defendant alleges the following as separate affirmative defenses without  
12 assuming the burden of proof, where such burden is otherwise on Plaintiff under  
13 applicable law. Defendant reserves the right to amend and/or supplement its affirmative  
14 defenses as they become apparent during this litigation.

15 1.

16 Plaintiffs' Complaint fails to state, in whole or in part, a claim upon which  
17 relief may be granted.

18 2.

19 Defendant invokes the defenses, protections, and limitations of  
20 Washington's wage and hour laws, including, but not limited to, RCW 49.48.030, in that  
21 Plaintiff and putative members of the Proposed Class as set forth in the Complaint are  
22 not entitled to recover attorney fees in this action to the extent that their amount of  
23 recovery is less than or equal to the amount admitted by Defendant or that Defendant  
24 has paid or agreed to pay.

25 3.

26 Plaintiff's claims may be barred, in whole or in part, by failure to exhaust



1 administrative remedies.

2 4.

3 In light of Plaintiff's failure to exhaust available grievance, arbitration, and  
4 administrative remedies, attorney fees are not reasonable or recoverable.

5 5.

6 Plaintiff's claims, in whole or in part, may require the interpretation of a  
7 collective bargaining agreement and are therefore preempted by the Labor Management  
8 Reporting and Disclosure Act ("LMRDA") and/or the Labor Management Relations Act  
9 ("LMRA").

10 6.

11 Defendant may be entitled to an offset or setoff of damages for payments it  
12 made to Plaintiff and putative members of the Proposed Class, including, but not limited  
13 to, payments for time not worked and any other form of overpayment.

14 7.

15 Plaintiffs' claims may be barred, in whole or in part, for failure to mitigate  
16 damages.

17 8.

18 Plaintiffs' claims may be barred, in whole or in part, by the doctrines of  
19 waiver, estoppel, and/or laches.

20 9.

21 Plaintiffs' claims may be barred, in whole or in part, because Defendant  
22 acted at all relevant times in good faith and Defendant's actions were not willful or with  
23 the intent to deprive Plaintiff or putative members of the Proposed Class of any part of  
24 their wages.

25 10.

26 If and to the extent that Plaintiff can prove that she engaged in any

1 uncompensated work, some or all of the time is de minimis and thus not compensable.

2 11.

3 Plaintiff's claims may be barred, in whole or in part, because the alleged  
4 pay discrepancies do not constitute withholdings, deductions, or diversions under  
5 RCW 49.52.060, WAC 296-126-028 and any similar or related laws or regulations.

6 12.

7 To the extent that Plaintiffs and putative members of the Proposed Class  
8 as set forth in the Complaint entered into releases with Defendant during their  
9 employment, upon termination of their employment, or in connection with other  
10 disputes or circumstances, their claims may have been released and waived.

11  
12 WHEREFORE, Defendant seeks judgment in its favor and against  
13 Plaintiff, that Plaintiff's claims be dismissed in their entirety with prejudice, and that  
14 Defendant be awarded attorney fees, costs, disbursements and such other relief as the  
15 Court may deem just and proper.

16 Dated this 27th day of December, 2022.

17 BULLARD LAW

18 By s/Dennis Westlind  
19 Dennis Westlind, WSB No. 39972  
20 Attorneys for Defendant  
21 Fred Meyer Stores, Inc.  
22  
23  
24  
25  
26

**CERTIFICATE OF SERVICE**

I hereby certify that on December 27, 2022 I served the foregoing

**DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT AND**

**AFFIRMATIVE DEFENSES on:**

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- ☒ by **electronic** means through the Court's Case Management/Electronic Case File system, which will send automatic notification of filing to each person listed above.
- ☐ by **mailing** a true and correct copy to the last known address of each person listed. It was contained in a sealed envelope, with postage paid, addressed as stated above, and deposited with the U.S. Postal Service in Portland, Oregon.
- ☐ by causing a true and correct copy to be **hand-delivered** to the last known address of each person listed. It was contained in a sealed envelope and addressed as stated above.
- ☐ by causing a true and correct copy to be delivered **via overnight courier** to the last known address of each person listed. It was contained in a sealed envelope, with courier fees paid, and addressed as stated above.
- ☐ by **faxing** a true and correct copy to the last known facsimile number of each person listed, with confirmation of delivery. It was addressed as stated above.
- ☐ by **emailing** a true and correct copy to the last known email address of each person listed, with confirmation of delivery.

s/Dennis Westlind  
Dennis Westlind, WSB No. 39972  
Attorneys for Defendant  
Fred Meyer Stores, Inc.